

HOLLAND & KNIGHT LLP
Thomas D. Leland (pro hac vice)
Leah E. Capritta (pro hac vice)
1801 California Street, Suite 5000
Denver, Colorado 80202
Telephone (303) 974-6660
Facsimile (303) 974-6659
Email: thomas.leland@hklaw.com
leah.capritta@hklaw.com

HOLLAND & KNIGHT LLP
Vince Farhat (SBN 183794)
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Telephone: (213) 896-2400
Facsimile: (213) 896-2450
Email: vince.farhat@hklaw.com

Attorneys for
TIGER NATURAL GAS, INC.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
- ☒ Affects Pacific Gas and Electric Company
- ☐ Affects both Debtors

**All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

CASE NO. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**TIGER NATURAL GAS, INC.'S REPLY
IN SUPPORT OF MOTION FOR RELIEF
FROM STAY PURSUANT TO 11 U.S.C. §
362(d)(1)**

RELATED DKT. NOS. 4322, 4393, & 4622

Date: November 13, 2019
Time: 10:00 AM (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection

Deadline: November 8, 2019
4:00 p.m. (Pacific Time)

1 Tiger Natural Gas, Inc. (“Tiger”) hereby files its Reply in Support of Motion for Relief
2 from the Automatic Stay in the above-entitled Chapter 11 case.

3 This Reply is based on the Declaration of Leah E. Capritta, Motion to File Certain
4 Documents Under Seal, and Declaration of Leah E. Capritta in Support of Motion to File Under
5 Seal, all filed contemporaneously herewith.

6 **I. INTRODUCTION**

7 Debtors’ grossly overstate the extent to which PG&E resources would be implicated
8 if the Court lifted the automatic stay to allow the District Court Case to proceed. While
9 Debtors characterize continuing the District Court Case as requiring the full-time contributions
10 of their Law, Information Technology, and Customer Care Departments, Debtors’ outside
11 counsel has already largely completed the work on the case. Indeed, Debtors’ own expert
12 witnesses testified during their depositions that they would require minimal additional
13 information or involvement from PG&E moving forward. Unsurprisingly, Debtors attempt to
14 downplay both the relative harm to Tiger and the fraudulent conduct at issue in the underlying
15 litigation if the case remains stayed. Yet, the hardship to Tiger would be significant. Contrary
16 to Debtors’ protests, the time is ripe to allow the case to proceed to trial before the District
17 Court, and the Court should grant Tiger the relief sought in its Motion. Because Tiger has
18 made a prima facie showing of cause for lifting the stay, the Court should grant Tiger’s Motion
19 for Relief from the Automatic Stay so that it may continue to pursue its claims against Debtors
20 in the District Court Case.

21 **II. ARGUMENT**

22 The Debtors’ Opposition misconstrues the effects of lifting the stay on Debtors’
23 reorganization efforts, drastically overstating the time and resources litigating the District
24 Court Case will require, while ignoring the clear hardship to Tiger that the stay will cause.

25 **A. DEBTORS DRAMATICALLY OVERSTATE THE RESULTING**
26 **HARM IN LIFTING THE AUTOMATIC STAY**

27 Debtors rely heavily upon the Declaration of Elizabeth Collier, which, “doth protest
28 too much,” in support of their claim that lifting the stay will unduly interfere with the

1 Bankruptcy proceeding. Ms. Collier drastically overstates the resources needed to continue
2 litigating the District Court Case. Lifting the stay will not negatively affect the Bankruptcy
3 cases, as they claim. First, the District Court Case alleges fraud and tort claims, which do not
4 implicate the issues arising in the Bankruptcy cases. *See In re Todd Shipyards Corp.*, 92 B.R.
5 600, 303 (Bankr. D. N.J. 1988). (“The automatic stay was never intended to preclude a
6 determination of tort liability and attendant damages. It was merely intended to prevent a
7 prejudicial dissipation of debtor’s assets.”)

8 Additionally, Debtors attempt to downplay the advanced stage of the Tiger litigation
9 prior to Debtors’ filing of their Petition. In reality, the only outstanding pre-trial phase of the
10 litigation remains the conclusion of expert discovery, which the Debtors’ own experts have
11 testified will not involve significant involvement from PG&E, if any at all. (Deposition
12 Transcript of Dr. Michael Quinn (“Quinn Tr.”) at 51:12–54:14; Deposition Transcript of
13 Daniel Ray (“Ray Tr.”) at 32:13–33:10.)¹ During their respective depositions, both experts
14 testified that they met with Debtors’ outside counsel early on and would not need additional
15 assistance from internal PG&E employees to complete their engagements. (Quinn Tr. at
16 14:15–15:22; 51:12–54:14; Ray Tr. at 32:13–35:22.) Debtors mischaracterize the efforts that
17 would be expended in continuing the Tiger litigation by attempting to argue that the case
18 would somehow need to be re-created should the Court lift the automatic stay, but the District
19 Court Case is well on its way to completion. No new depositions will be taken, except for the
20 experts, whom by their own admission, will not require significant involvement from Debtors
21 moving forward.

22 Debtors similarly exaggerate the level of involvement needed from internal PG&E
23 personnel to proceed with the District Court Case. In their Opposition, Debtors belabor the
24 overextension of the Debtors’ Law, Information Technology, and Customer Care
25 Departments. (Opp. at 8–9.) Yet, Debtors engaged the same, highly competent, outside

26 _____
27 ¹ Tiger is seeking permission to file the relevant excerpts from these transcripts under seal
28 pursuant to its Motion to File Certain Documents Under Seal filed contemporaneously herewith.
These depositions were taken in the legally and factually similar case *United Energy Trading,
LLC v. PG&E, et al.*, No. 15 Civ. 2383 (RS) (SK), and the parties stipulated that the deposition
testimony may be used and relied upon in Tiger’s action as though taken therein.

1 counsel of Steptoe and Johnson LLP to represent their interests in all four of the cases
2 involving Core Transport Agents (CTAs). Such outside counsel operate largely independently
3 and would alleviate any workload pressures on Debtor's Law Department. *See In re Baleine*,
4 2015 WL 5979948, at *9 (*citing In re Santa Clara Cnty. Fair Ass'n*, 180 B.R. 564, 566
5 (B.A.P. 9th Cir. 1995)) (litigation costs to a bankruptcy estate do not compel a court to deny
6 stay relief). Moreover, even if Debtors needed the input of the Customer Care Department, the
7 relevant departments would only include the Third Party Billing Department or the Third
8 Party Customer Relations Department, which specifically deal with CTAs and other outside
9 energy providers. Neither of these departments work on matters relating to the wildfire claims.
10 Because Debtors mischaracterize the harm that lifting the stay would cause, the Court should
11 conclude that this factor weighs in favor of Tiger.

12 **B. IN CONTRAST, THE HARM TO TIGER IS SIGNIFICANT**

13 i. Tiger Will Be Forced to Litigate the Case in Piecemeal Fashion

14 Lifting the stay will allow the District Court Case to proceed in a forum in which complete
15 resolution will be obtained. The case involves one defendant, Debtor PG&E Company, and three
16 individual defendants, and the District Court maintains jurisdiction over the parties and the claims
17 at issue, none of which impact this Court's areas of focus. The same PG&E attorneys that
18 represent the corporate defendant also represent the individuals. If the Court does not grant the
19 Motion for Relief from Stay, efforts will be duplicated, by both Debtors and Tiger, in
20 litigating the cases in separate fora. *See In re Blan*, 237 B.R. 737, 738 (B.A.P. 8th Cir. 1999)
21 (lifting the automatic stay to allow civil suit to proceed to avoid duplication of resources in trying
22 defendants separately where bankruptcy court lacked jurisdiction over co-defendants and where
23 the parties had not yet taken any depositions at the time of the bankruptcy filing).

24 ii. Debtors' Fraud Will Continue

25 As discussed in Tiger's Motion (but all but glossed over in Debtors' Opposition)
26 Tiger's underlying suit addresses Debtors' fraudulent and deceptive behavior in acting as
27 Tiger's billing and collection agent. The Complaint alleges that Debtor PG&E engages in three
28 schemes involving the CC&B system. Specifically, it alleges claims under RICO, the Sherman

1 Act, intentional and negligent misrepresentation, intentional interference with contract, breach
2 of contract, breach of fiduciary duty and violation of the California Unfair Competition Law.
3 Staying the Tiger Case will only permit Debtors' fraudulent conduct to continue. *See In re 343*
4 *E. 43rd St. Holding Corp.*, 46 B.R. 562, 562 (Bankr. S.D.N.Y. 1985) (granting relief from the
5 automatic stay to allow underlying litigation to proceed with discovery where case involved
6 allegations of fraudulent conduct by the debtor). Lifting the stay will be particularly important
7 given the effects of Debtors' actions upon Tiger's customers in Northern California.

8 C. **JUDICIAL ECONOMY WEIGHS IN FAVOR OF RELIEF FROM**
9 **STAY**

10 Proceeding with the Tiger Case will conserve resources given the District Court's
11 familiarity with the issues and the advanced stage of the case. *See In re Todd Shipyards Corp.*,
12 92 B.R. 600, 604 (Bankr. D.N.J. 1988) ("[I]t will often be more appropriate to permit
13 proceedings to continue in their place of origin, when no great prejudice to the bankruptcy
14 estate would result, in order to leave the parties to their chosen forum and to relieve the
15 bankruptcy court from any duties that may be handled elsewhere.").

16 Addressing Tiger's claims before the Bankruptcy Court would not further judicial
17 economy given the time and resources that would be required to familiarize a new judge with
18 the legal and factual issues, as well as the discovery background, of the case. Granting relief
19 from the stay would efficiently liquidate Tiger's claims against all defendants in one forum.

20 D. **A BALANCING OF THE RELATIVE HARDSHIPS WEIGHS IN**
21 **FAVOR OF GRANTING RELIEF FROM STAY**

22 The balance of the hardships in favor of granting Tiger relief from the automatic stay.
23 Despite their claims to the contrary, Debtors would not experience significant hardship if the
24 Court allowed the District Court Case to proceed. Instead, Tiger will suffer significant harm in
25 litigating the case in piecemeal fashion or onboarding a new judge to the facts and law of the
26 case. In addition, the ongoing nature of PG&E's fraudulent acts intensifies the hardship to
27 Tiger and its Northern California customers. PG&E's progress before this Court underscores
28 the hardship to Tiger and the lack of hardship to PG&E itself. Therefore the Court should
grant Tiger's Motion for Relief from Stay and allow the District Court Case to proceed.

1 **III. CONCLUSION**

2 For the foregoing reasons, and based upon the evidence set forth in this Reply and Tiger's
3 Motion, the Court should grant relief from the automatic stay to allow Tiger to pursue its claims
4 against the Debtor in the District Court Case.

5
6 DATED: November 11, 2019

7 Respectfully submitted,

8 HOLLAND & KNIGHT LLP

9 By: /s/ Leah E. Capritta
10 Leah E. Capritta

11 *Attorneys for Tiger Natural Gas, Inc.*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28